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EXAMINER

OKEZIE, ESTHER O

ART UNIT PAPER NUMBER

3654

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,873

Applicant(s)

LERMAN, PETER M.

Examiner

Esther O. Okezie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Response to Amendment

The amendment filed on 4/15/2005 and the remarks presented therewith have been carefully considered but are moot in view of the new ground(s) of rejection.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second swivel member must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Previously, an objection was made to the drawings because adjustable handle lengths were not shown and the reference character 30 was used to designate both the receiver end of the hinge and the swivel member 28. The examiner presumed that the second swivel member was meant to be the end 30 of the hinge, but incorrectly labeled. Presently the reference character 30 has been corrected and designated as the receiver end of the hinge, consequently there is no reference character corresponding to the "second swivel member" nor is it mentioned in the drawing description lending further confusion to the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

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number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 4 recites the limitation "the first and second swivel members" in line 4.

There is insufficient antecedent basis for "the first swivel member" this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Rocha.

1. Re claim 1, Rocha discloses a two-handled shovel comprising: a primary handle fixed at a tool end to a tool head (14); a secondary handle detachably connected at a first end to the primary handle proximate the tool head (30); and a hinge coupling assembly detachably connecting the secondary handle to the primary handle (figures 1a, 1b, 3a and 3b).

2. Re claim 2, a hinge means mounted on the primary handle (40; see figs 2, 3a, 5; "...reference A refers to the pivotal back and forth motion of the secondary handle.." column 4, lines 49-51); and a handle swivel means (60) connecting the secondary handle to the hinge means.

3. Re claim 3, a base plate (lug 64; fig 1b); a first fastener means (78; fig 1a) mounting the base plate to the primary handle, a hinge plate (38 and 40), the hinge plate hingeably connected to the base plate and having a first swivel member (bushing 60) disposed thereon (fig. 3a); and a removable hinge pin (68; fig 1a) for hingeably connecting and disconnecting the base plate with the hinge plate.

4. Re claim 7, a primary handle (14) fixed at a tool end to a tool head; a secondary handle (30) detachably connected at a first end to the primary handle proximate the tool head; and a hinge coupling assembly detachably connecting the secondary handle to the primary handle (figures 1a, 1b, 3a and 3b), the hinge coupling assembly having a hinge means (fig 1a) mounted on the primary handle and a swivel means (60)

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connecting the secondary handle to the hinge means, the hinge means disposed to allow the secondary handle to swing in a plane perpendicular to the primary handle (see figure 5, rotation arrows A) and the swivel means disposed to allow the secondary handle to swing in a plane parallel to the primary handle (see figure a rotation circle B about swivel means or bushing 60).

3. Claims 1-3, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Davidson.

5. Re claim 1, Davidson discloses a two-handled shovel comprising: a primary handle fixed at a tool end to a tool head (12); a secondary handle detachably connected at a first end to the primary handle (24) proximate the tool head (28); and a hinge coupling assembly detachably connecting the secondary handle to the primary handle (figures 1, 1a, and 2).

6. Re claim 2, a hinge means mounted on the primary handle (figure 2); and a handle swivel means (42) connecting the secondary handle to the hinge means.

7. Re claim 3, a base plate (36); a first fastener means (32) mounting the base plate to the primary handle, a hinge plate (45), the hinge plate hingeably connected to the base plate and having a first swivel member (42) disposed thereon; and a removable hinge pin (46) for hingeably connecting and disconnecting the base plate with the hinge plate (fig 2).

8. Re claim 7, a primary handle (24) fixed at a tool end to a tool head; a secondary handle (12) detachably connected at a first end to the primary handle proximate the tool

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head (28); and a hinge coupling assembly (fig 1a,2) detachably connecting the secondary handle to the primary handle, the hinge coupling assembly having a hinge means (45) mounted on the primary handle and a swivel means (42) connecting the secondary handle to the hinge means, the hinge means disposed to allow the secondary handle to swing in a plane perpendicular to the primary handle ("The elongated tube 12 pivots on the pin 46 and in a plane indicated by dotted lines Y and Z. this plane is perpendicular to the plane of the shovel handle 24..." column 2, lines 42-45) and the swivel means disposed to allow the secondary handle to swing in a plane parallel to the primary handle ("The swivel 42 pivots about the pin 44 in a plane indicated by the dotted lines X and Y. This plane is parallel to the plane of the shovel handle ..." column 2, lines 32-36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson. Davidson shows one swivel member (42). It is unclear to the examiner where exactly the second swivel member rotating in the common plane is located in the applicant's disclosure. Apparently there is a hinge pin (54a) upon which the second handle (22)

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rotates perpendicular to the primary handle and a swivel pin (46a) about which the second handle rotates parallel to the primary handle. Another swivel member like 46a cannot be distinguished. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shovel of Davidson to include a second swivel member since a pair of swivel members would provide a stronger hinge. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Response to Arguments

Applicant's arguments with respect to claims 1-4, and 7 have been considered but are moot in view of the new ground(s) of rejection.

The examiner points out that the reference of Lucas was applied before the corrections to the drawings and specification were received. Yet, the matter of a "second swivel member" is in question as described above. However, the corrections have been considered and a new ground of rejection has been described above.

Both Rocha and Davidson teach a two handled shovel with a detachable handle that can be both pivotably rotated back and forth and swiveled around the primary handle.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO



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